

IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'F' NEW DELHI)

BEFORE SHRI U.B.S. BEDI, JUDICIAL MEMBER  
AND  
SHRI B.K. HALDAR, ACCOUNTANT MEMBER

I.T.A. No.767/Del/2007  
Assessment year : 1997-98

Smt. Pushpa Agarwal,  
3/167, Sunder Vihar,  
New Delhi.

ITO,  
Ward-25 (3),  
New Delhi.  
V.

(Appellant)

(Respondent)

**PAN /GIR/No.AACPA-1755-A**

Appellant by : Shri K.P. Garg, C.A.

Respondent by : Smt. Pratima Kaushik, Sr. DR.

ORDER

PER B.K. HALDAR, AM:

This is an appeal filed by the assessee against the order of Ld CIT(A)-XXIV, New Delhi dated 13.11.2006 for assessment year 1997-98 on an order passed by the al u/s 143(3)/147 of the Income Tax Act, 1961. The assessee has taken following grounds of appeals:-

1. The order passed by the Assessing Officer u/s 143(3) /147 of the Income Tax Act, 1961 is bad in law and on facts beyond jurisdiction, illegal and void ab initio.

1.1. That no notice u/s 148 of the IT Act, 1961 having been served on the assessee before completion of assessment u/s 147, the assessment is null and void for lack of necessary jurisdiction.

1.2. That Assessing Officer erred on facts and in law in initiating the proceedings u/s 147 solely on the basis of information given by Dy. Director of Income Tax (Inv.) Gurgaon and the reasons recorded for initiating the proceedings are not based on evidence but on mere suspicion.

2. The Ld CIT(A)-XXIX, New Delhi erred on facts and circumstances of the case and in law in holding that service of notice by affixture is a valid service without satisfying the primary conditions precedent thereto.

3. The Ld CIT(A) erred on facts and circumstances of the case and in law, in completing the assessment u/s 147/143(3) by disallowing exemption u/s 54F contrary to the facts of the case as verified and confirmed by the Assessing Officer.

4. The Ld CIT(A) erred on facts and circumstances of the case in law in completing the assessment u/s 147/143(3) by disallowing exemption u/s 54F contrary to the fact that such action does not have any live or direct nexus with the information in possession of the Assessing Officer, the very basis on which the primary reopening was undertaken.

5. Without prejudice to our main contention above, interest u/s 234B, if any ought to be charged upto the date of determination of total income u/s 143(1).

2. The assessee furnished return of income for assessment year 1997-98 disclosing total income of ₹.56,400/- on 30.3.1998. Subsequently, information was received from Deputy Director of Income Tax (Inv.), Gurgaon that post search enquiry in the case of M/s R.K. Agarwal & Co. revealed that the assessee received accommodation entry amounting to ₹.1,71,587/- plus ₹.1,50,000/- from the said party during the relevant previous year. It was further noted

that the accommodation entries were disclosed by the assessee as transaction relating to purchase and sale of shares giving rise to long term capital gain. On such long term capital gain, the assessee claimed exemption u/s 54F of the Act. The Assessing Officer, therefore, issued notice u/s 148 of the Act after holding that income chargeable to tax has escaped assessment. Such notice was issued by registered post on 8.9.2003. The said notice came back with the postal remarks "left without address". The notice u/s 148 was served by affixture on 1.10.2003. The assessee vide letter dated 28.2.2004 contended that the return filed vide receipt No.4399 dated 31.3.1998 may be considered as the return filed in compliance to notice u/s 148 of the Act.

3. During the assessment proceedings, the assessee vide letter dated 28.9.2004 contended that the notice issued u/s 148 was beyond the stipulated time. The above contention of the assessee was rejected by the Assessing Officer as such notice could be issued within six years from the end of the relevant assessment year i.e. till 31.3.2004.

4. As regards the transactions which were shown by the assessee on account of sale and purchase of shares but reported as accommodation entries by Inv. Wing, the Assessing Officer required the assessee to furnish the following details:-

1. Nature of transactions with M/s RK Agarwal & Co. Prop. Shri Satish Goyal, 1748/55, Naiwala Karol Bagh, New Delhi against which cheque draft bearing No.926217 amounting to ₹. 321587/- were received by you.

2. Date wise break up of investment in share in sources of purchase of share with documentary evidence.
3. Evidence regarding rate of share purchase by you during the period.
4. Confirmation from the company along with copy of account showing transfer of share in your name.
5. Evidence regarding rate of share sold by you during the period.
6. Confirmation from M/s R.K. Aggarwal & Co. Prop. Shri Satish Goyal, 1748/55, Naiwala, Karol Bagh, New Delhi regarding nature of transaction along with copy of account.
7. Details of total amounts invested in share, total value of share sold by you profit earned on account of transaction of share and break up of utilization of total receipt from sale of along with documentary evidence.

5. Though various opportunities were allowed by the Assessing Officer, the assessee did not furnish any details other than the detail of sale of shares through M/s RK Agarwal & Co. In the above circumstances, the amount of capital gain which was shown as ₹.3,21,587/- by the assessee and claimed to have been invested in construction of house property was added by the Assessing Officer as unexplained investment. The claim of exemption u/s 54F of the Act was also not allowed. Aggrieved, the assessee filed appeal before the Ld CIT(A).

6. Before the Ld CIT(A), the assessee challenged both the validity of the opening of assessment as well as the addition of ₹.3,21,587/- on merit.

7. With reference to the issue of reopening of assessment, the assessee considered as under:-

1. The notice u/s 148 of the IT Act was sent to 1A-1B/3A, LIG Flats, Pachim Vihar, New Delhi. This premises of the assessee was on rent. The changed address of the assessee was 3/167, Sunder Vihar, New Delhi-110087. The return for assessment year 1997-98 onwards were filed mentioning above address only. The Assessing Officer, therefore, sent notice u/s 148 of the Act to the wrong address. The same was also affixed at the wrong address. Thus, the above action cannot be considered as a valid service of notice u/s 148 of the Act. Reliance was placed on the following case laws:-

1. RK Upadhyaya v. Shanabhai P. Patel. 62 ITR 17.
2. CIOT v. Mintu Kakalita 170 CTR 149 (Gauhati).

The Ld CIT(A) obtained remand report dated 10.7.2006 and 25.10.2006 from the Assessing Officer and after considering the same together with the submissions made by the assessee held as under:-

The only known address of the assessee available with the Assessing Officer was A-1B/3A, LIG Flats., Pachim Vihar, New Delhi. The assessee filed a return for assessment year 1996-97 and 1997-98 with ITO, Ward-021(1), New Delhi. However, the Assessing Officer having jurisdiction at the relevant point of time was ITO, Ward-25 (3), New Delhi. Thus, the ITO, Ward-25 (3) could not have issued notices u/s 148 of the Act on any address other the address which was available on record.

2. Jurisdiction of Assessing Officer changed due to reconstruction of IT Department w.e.f. 1.8.2001 and the same was published in the official gazette. All tax payers were made aware of the revised jurisdiction. However, the assessee did not intimate the Assessing Officer having current jurisdiction over her, her present address.
3. The Assessing Officer made enquiry from State Bank of India, Pachim Vihar Branch, New Delhi. A letter was received from the said bank on 9.7.2004/10.7.2004 from which the Assessing Officer came to know the changed address of the assessee and thereafter the notices were issued to the present address of the assessee. The assessee of her own intimated the correct address to the Assessing Officer only on 28.9.2004.
4. From the written submissions of the assessee dated 28.9.2004, it could be seen that at the last known address of the appellant on which notice u/s 148 of the Act was served through affixture was used by M/s Mungipa Electronics, Prop. RP Agarwal, who is the husband of the appellant.
5. As per the evidence on record it could be conclusively proved that at the time when the assessee filed return of income for assessment year 1996-97 and 1997-98, the assessee was not residing at 3/167, Sunder Vihar, New Delhi as claimed in such returns of income. Copy of return of income for assessment year 1997-98 disclosed that the address of the assessee was changed by using white ink on return of income.
6. As per section 282 of the Act, the notice u/s 148 of the Act was therefore, correctly served by the Assessing Officer.

8. The assessee also raised following contentions on validity of initiation of proceedings u/s 148 of the Act.

“that appellant had disclosed all the material relating to assessment proceedings fully and truly and there was no basis for forming reason to belief;

that appellant placed reliance on judgment of Hon'ble Supreme Court in the case of Calcutta Discount Co Ltd. v. ITO (1961) 41 ITR 191;

no effort was made by the Assessing Officer to find out what is income which was declared by the appellant on what basis the Assessing Officer assumed that any income had escaped assessment;

that Assessing Officer had failed to establish that there were material from which he could form a belief;

that Assessing Officer has initiated the proceedings on the basis of suspicion and in consequence of the information received from higher authorities;

that as per judgment of Hon'ble Madras High Court in the case of CIT v. T. R. Rajkumari (1974) 96 ITR 78 TC 51 R 430, re-assessment proceeding initiated on the direction given by the CIT could be invalid”.

9. The Ld CIT(A) considered the facts of the present case and thereafter held that such contentions raised by the assessee were without any basis. The information received from the Inv. Wing was valid information on the basis of which the Assessing Officer could reopen the assessment as per the provisions of the Section 147 of the Act especially when the original return filed, in the case of the assessee, was only processed u/s 143(1) of the Act. While coming to

the above conclusion the Ld CIT(A) relied on the case laws as discussed by him in pages 7 to 17 of his order.

10. On merit, the assessee contended before the Ld CIT(A) as under:-

-that appellant filed all the supporting evidences of sale of share.

For example

- contract note for sale of share, copy of account of broker, copy of share certificate which was in the name of appellant as evident from endorsement on the share certificate;

that transaction was carried out through a person who is a registered Member of Stock Exchange;

that Assessing Officer had ignored a fact that above referred to sale proceed was received through account payee cheque and the same is credited to the bank account of the appellant;

that Assessing Officer framed assessment without confronting appellant with an evidence like seized document of M/s R. K. Aggarwal & Co. or copy of statement of Shri Satish Goyal;

that framing of assessment order without confronting appellant with relevant evidence is in violation of basic principle of natural justice and such assessment cannot be a valid assessment and is liable to be struck down;

even on specific request, no opportunity to the appellant to cross examine Shri Satish Goyal whose statement was used against appellant was granted;

that Assessing Officer had failed to prove if Shri Satish Goel had directly implicated the appellant;

that allegation of bogus transaction was without any basis and was contrary to the evidence on record;



that since the Assessing Officer had made allegation of accommodation entry, it was duty of the Assessing Officer to discharge his burden of proof that genuine sale transaction actually represents the accommodation entry, however, Assessing Officer has not cared to discharge its onus.

the Id. Authorised Representative has pleaded that Hon 'ble Delhi ITAT has examined identical issues in cases of another assessee where Assessing Officer had made identical addition on account of alleged bogus sale of share on the basis of report of DDIT and has decided issued in favour of appellant as per following details:-

Smt. Sneh Gupta ITA No. 44/Del/01 order dated 24.5.04 Smt. Sunita Gupta ITA No. 881/Del/04 order dated 28.5.04 Shri Rajiv Aggarwal ITA No. 960/Del/04 order dated 4.6.04

Shri Sanjay Kumar Bansal ITA No. 1476/Del/04 order dated 29.10.04 Smt. Chandan Bala Jain ITA NO.5220/Del/04 order dated 8.5.05

Smt. Jai Mala Jain ITA No. 3478/Del/04 order dated 6.7.05

It has been pleaded that following the above cited judgment of Hon'ble Delhi ITA T no addition could be made on account of bogus sale of share in the case of appellant.

Id. Authorised Representative for appellant has also placed reliance on order of my predecessor in appeal NO.211/04-05 dated 15.12.05 where identical addition on the basis of DDIT report was deleted".

11. The Ld CIT(A) accepted the submissions of the assessee and held that profit arising out of the amount of ₹.3,21,587/- should be considered as income under the head long term capital gain. However, the Ld CIT(A) held that the assessee was not entitled to exemption u/s

54F of the act. The assessee was entitled to exemption u/s 54F only when it could be shown that the house property was constructed by December, 1996. The assessee furnished following evidence before the Ld CIT(A):\_

- "1. Copy of Agreement to Sell dated 25.4.1994
2. Copy of receipt NO.3856 dt. 27.3.98 in respect of income tax return of Mr. R. P. Aggarwal, husband of the appellant (owner of M/s Mungipa Electronics) regarding filing of return of income at his business address in Peeragarhi.
3. Copy of letter filed on 20.1.98 with ITO, Ward 21 (1) filed by Mr. R. P. Aggarwal for shifting of address from Paschim Vihar to Sunder Vihar (i.e. address of new residential house).
4. Copy of Ration Card dated 28.4.03 of the appellant evidencing that a residential house had been constructed by the appellant on the plot purchased. "

12. The Ld CIT(A) required the Assessing Officer to make further enquiry from the MCD. The Executive Engineer (Bldg.), MCD vide his letter dated 25.10.2006 certified that appellant did not construct any property at 3/167, Sunder Vihar, New Delhi. The relevant extract of the letter of the Executive Engineer reads as under:-

"With reference to your office letter No. ITO/Ward 25(3)/06-07/666 dated 23.10.06, vide which you have requisite some information u/s 133(6) of the Income Tax Act,1961 in the case of Mrs. Pushpa Aggarwal, owner of property No. 3/167, Sunder Vihar. .

In this regard. it is informed that neither any building plan nor completion certificate are issued by this office in respect of

property bearing No. 3/ 167, Sunder Vihar, Paschim Vihar, as per the record available in this office since 1.4.1996 to 31.3.2004. "

13. When confronted with the above, the assessee made the following submissions:-

"The appellant is in appeal before your honour on account of the additions made by the Assessing Officer for unexplained income invested in house property.

Moreover the proceedings have been initiated by the Assessing Officer u/ 147. From the assessment order it will be clear that it is the investment in the house property which is alleged to be unexplained, for which the addition has been made.

No case has been made out by the Assessing Officer for disallowance of the claim u/s 54F. there is no adverse observation of the Assessing Officer in the assessment order regarding the investment made in the new house property.

It is a trite law that the appellant authority cannot travel beyond the subject matter of the assessment order itself

It may also be brought to your honour's attention that the jurisdiction of the ITO to deal with the matter is itself under appeal. In case the issue of jurisdiction to frame the order is decided in our favour, the order of the Assessing Officer would be void ab initio and no further action can be initiated on a null order.

Without prejudice to our grounds of appeal, earlier contentions and objections as stated above, we clarify the issues raised by your honour vide your letter dated 26.10.06, as under.

1. At the very onset it may be brought to your honor attention that the information being presented by the Id. Assessing Officer are part truths and being forwarded in a partial manner. He is trying to rake up new issues and deviating from the issues raised in the ground of appeal. No firm reply on the grounds raised regarding service of notice and other jurisdiction issues have been addressed by him in the report.
- 2.The Assessing Officer is trying to travel beyond the original assessment order itself and hence the action of the Assessing Officer is beyond the jurisdiction and scope as defined under the law.
3. As regards the issue of building plan, it is submitted that necessary permission from the relevant authority was obtained on 24.8.94 for the construction on the property bearing No. 167, Sunder Vihar, New Delhi. Photocopy of the said letter bearing No. 351/BIWZ/94f563 dated 24.8.94 is enclosed at page No.4 for your kind reference.
4. As regards the purchase of the property it may be submitted that the necessary conveyance deed has also been registered in favour of the assessee on 10.1.97 by DDA. Photocopy of the said conveyance deed dated. 10. 1.97 is enclosed at page No. 5-12 for your kind reference.
5. Property tax on the said property for the year 1998-99 has also been paid on the basis of the built up area. Photocopy of the property tax bill as well as the proof of payment, is also enclosed at page No. 19 to 20 for your kind reference.
6. Documentary evidences and withdrawal of funds duly support the total cost of acquisition and construction on the house property amounting to RS.3, 21,588. All the evidences regarding the transaction were before the Assessing Officer and duly

verified by him. He in this regard has made no adverse observation in the assessment order.

7. It is also submitted that in order to claim deduction u/s 54F there is no requirement under the law for submission of building plan/ completion certificate. The requirement is of investment in residential house property within the specified time limit.

14. The Ld CIT(A) considering the facts and circumstances of the case and submissions made by the assessee observed as under:-

1. The agreement to sell dated 25.4.1994 was not signed by both the parties and was not registered. It had only signature of Shri Chandan Singh Dhaliwal who had the lease-hold rights. The mode of payment of the amount of ₹.1,85,000/- was also left blank on the receipt. There was no other evidence in support of the claim of the assessee that the possession of the land was taken on 25.4.1994. The letter of the MCD dated 24.8.1994 issued to Shri Chandan Singh Dhaliwal proved the claim of the assessee that the possession of the said land was taken over by her on 25.4.1994 as false. As such the lease hold rights of Shri Chandan Singh Dhaliwal was transferred to the assessee by a registered deed only on 10.3.1998. The property tax receipt dated 27.8.1998 further proves that the said property was constructed by Shri Chandan Singh Dhaliwal.

15. The Ld CIT(A), therefore, held that there was no evidence to show that a residential house property was constructed by the assessee by making investment at ₹.4,35,000/- within the stipulated period as per the provisions of section 54F of the Act. He, therefore

denied the assessee exemption u/s 54F of the Act. Aggrieved the assessee has filed appeal before the Tribunal.

16. Before us the Ld AR for the assessee relied on the submissions made before the authorities below with reference to validity of reopening of assessment u/s 147 of the Act. It was contended by himr that no valid notice u/s 148 was served on the assessee within six years from the end of the assessment year. For the above purpose, he referred to various pages of the paper book. It was also contended that information received from Investigation Wing would not entitle the Assessing Officer to reopen the assessment by issue of notice u/s 148 of the Act.

17. The Ld DR, on the other hand, relied on the orders of the authorities below. It was contended by her that reopening of assessment u/s 147 was validly done. It was further contended by her that the information received from the Investigation Wing was specific on the basis of which the Assessing Officer could have formed a prima facie satisfaction that income had escaped assessment. Reliance was placed by her on the order of Coordinate Bench of the ITAT in I.T.A. No.273/Del/2010 in the case of Ms. Abha Garg. It was contended by her that in similar facts and circumstances as obtained in the present case, the ITAT, Delhi Bench 'A', New Delhi in the above case has upheld the reopening of assessment u/s 147 of the Act. Further reliance was placed on the following case law:-

1. AGR Investment Ltd. v. Addl. CIT 333 ITR 146 (Del.).

18. In the rejoinder, it was submitted by the Ld AR for the assessee that even return of subsequent years were filed showing the same

present address. However, no evidence in support of the same could be produced by him. It was further contended by him that valid service of notice is required. Knowledge of such notice being issued is not material. The Ld AR for the assessee further contended that facts of the present case are not identical to the case of the ITAT on which reliance has been placed by the Ld DR. It was also submitted that the Hon'ble Delhi High Court's decision in the case of Signature Hotels (supra) is applicable in the facts of the present case and not the decision in the case of AGR Investment Ltd. (supra) on which reliance has been placed by the Ld DR.

19. We have heard the parties and perused the record. We have also gone through the case laws relied on by both the parties. We find that in para 1 of assessment order, the Assessing Officer has stated as under:-

“In compliance thereto the Ld AR of the assessee vide his letter dated 28.2.2004 submitted that the return already filed vide receipt No.4399 dated 31.3.1998 may be considered as a compliance to your requisition.”

20. The assessee also has not rebutted the finding of the Id CIT(A) that on the date when notice u/s 148 was issued, the only known address with the Assessing Officer was that to which such notice was addressed and subsequently served by affixture. In the above facts and taking into consideration the detailed discussion on the issue by the Ld CIT(A), we are of the considered opinion that the notice u/s 148 was validly served on the assessee within six years from the end of the assessment year under consideration.

21. As regards the issue as to whether the information received from Investigation Wing could form valid basis for reopening of assessment u/s 148 of the Act, we find that the assessee did not bring on record any material to show that the facts of the present case were identical with those of Signature Hotels (supra). Prima facie the facts of the present case are similar to that of the Hon'ble Tribunal's order in the case of Ms. Abha Garg (supra) and that of the Hon'ble jurisdictional High Court's decision in the case of AGR Investment Ltd. (supra). In this view of the matter, we hold that the information received from the Investigation Wing was valid information on the basis of which the case was reopened by issue of notice u/s 148 of the Act. Thus, ground No. 1 & 2 taken by the assessee is rejected.

22. As regards the issue as to whether the Assessing Officer could have disallowed exemption u/s 54F of the Act while completing the assessment u/s 147/143(3) of the Act, no specific argument was advanced by the Ld AR for the assessee. However, we find that Explanation-3 to section 147 of the Act which is applicable with retrospective effect from 1.4.1989 takes care of the same. Thus, ground No.3 taken by the assessee is rejected.

23. The Ld AR for the assessee contended before us that Ld CIT(A) could not have gone into the whole issue of capital gain and allowability of exemption u/s 54F of the Act. It was submitted by him that as such the claim of the assessee u/s 54F of the Act as made in the return of income was accepted by the Assessing Officer. It was contended that the Ld CIT(A) did not have jurisdiction to consider the allowability of otherwise the claim of exemption u/s 54F of the Act. Reliance was placed by him on the following case laws:-



1. CIT v. Union Tyres 240 ITR 566 (Del.).

He also reiterated the submissions made before the Ld CIT(A).

24. On merit, the disallowance of exemption u/s 54F, in addition to submission made before the Ld CIT(A), the Ld AR for the assessee submitted that the property in question was constructed by Shri Dhaliwal on behalf of the assessee. He also referred to various pages of the paper book in support of the claim that the said property was in physical possession of the assessee at the relevant period of time. This included copy of relevant pages of S.B. Account No., 660, conveyance deed in favour of Smt. Pushpa Agarwal dated 10.9.1997, water and sewerage connection, electricity receipt etc. (APB 3-13; APB 7-13) being new documents). It was, therefore, contended by him that the assessee was entitled to deduction u/s 54F of the Act.

25. The Ld DR, on the other hand, relied on the order of Id CIT(A).

26. The jurisdiction of CIT(A) is co-terminus with that of the Assessing Officer. This is a settled proposition of law. Thus, the Ld AR for the assessee's contention that the CIT(A) could not have dealt with the issue of allowability of exemption u/s 54F is not accepted by us.

27. We have heard the parties and perused the record. The relevant information for allowability of exemption u/s 54F are the following:-

1. Date of transfer of long term capital asset;
2. Purchase/construction of a residential house;
3. Date of purchase of residential house/period of construction of residential house.

28. In the present case, the transactions giving rise to long term capital gain took place on 22.4.1996. The assessee contended that whole of the capital gain i.e. ₹.2,98,222/- was invested for construction of residential house at 3/167, Sunder Vihar, New Delhi-110087. Rent receipt for February & March, 1997 from rented portion of such premises was disclosed at ₹.5600/-. The Department has not disputed the rent receipt. The Id DR has also not objected to the filing of additional evidence by the assessee before us. The Ld CIT(A) has also not considered all the aspects of section 54F of the Act. The revenue has also not disputed the Ld CIT(A)'s finding that income arising out of the transactions in shares would give rise to long term capital gain. In this view of the matter, we are of the considered opinion that the orders of the authorities below on the issue of allowability of exemption u/s 54F is required to be set aside and the matter remanded back to the file of the Assessing Officer with the direction that a fresh order be passed as per law on this issue after giving the assessee adequate opportunity of being heard. If it is found that the assessee within a period of one year before or two years after the date on which the transfer took place purchased or has within a period of three years after that date, constructed a residential house and all other conditions mentioned in section 54F are satisfied, the assessee should be allowed exemption u/s 54F of the Act. We hold accordingly. Thus, ground No.4 taken by the assessee is allowed for statistical purposes.

29. Ground No.5 regarding interest u/s 234B is consequential.

30. In the result, the appeal filed by the assessee is allowed in part for statistical purposes.

31. Order pronounced in the open court on the 30<sup>th</sup> day of November, 2011.

Sd/-

(U.B.S. BEDI)  
JUDICIAL MEMBER

SD/-

(B.K. HALDAR)  
ACCOUNTANT MEMBER

Dt. 30.11.2011.  
HMS

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi.

True copy.

By Order

(ITAT, New Delhi).